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L & L Wings, Inc.*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

L & L WINGS, INC.,

Plaintiff and Counterclaim Defendant,

-against-

MARCO-DESTIN INC., 1000 HIGHWAY
98 EAST CORP., PANAMA SURF &
SPORT, INC. AND E & T INC.,

Defendants and Counterclaim Plaintiffs.

ECF Case

Civil Action No. CV-07-4137
(BSJ) (GWG)

**PROPOSED AMENDED REPLY
TO COUNTERCLAIMS WITH
AFFIRMATIVE DEFENSES**

Plaintiff, L & L Wings, Inc. (“Wings”), by its counsel, hereby responds to Defendants’ Counterclaims contained in Defendants’ ANSWER TO COMPLAINT AND COUNTERCLAIMS (herein, “the Answer”), upon information and belief, as follows:

Answer to Counterclaims

1. Admits the allegations contained in ¶¶ 82, 84, 85, 86, 87 and 88 of the section entitled, **“COUNTERCLAIMS”** of the Answer.

2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in ¶ 83 of the Answer.

3. Denies, in their entirety, the allegations contained in ¶¶ 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99 and 100 of the Answer.

4. With respect to the allegations contained in ¶ 101 of the Answer Plaintiff responds to the allegations incorporated therein by reference as previously set forth herein with respect to the individual paragraphs.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in ¶ 102 of the Answer.

6. Denies, in their entirety, the allegations contained in ¶¶ 103, 104, 105 and 106 of the Answer.

7. With respect to the allegations contained in ¶ 107 of the Answer Plaintiff responds to the allegations incorporated therein by reference as previously set forth herein with respect to the individual paragraphs.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in ¶¶ 108 and 111 of the Answer.

9. With respect to the allegations contained in ¶ 109 Plaintiff denies the allegations as stated therein.

10. Denies, in their entirety, the allegations contained in ¶¶ 110, 112 and 113 of the Answer.

11. With respect to the allegations contained in ¶ 114 of the Answer Plaintiff responds to the allegations incorporated therein by reference as previously set forth herein with respect to the individual paragraphs.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in ¶¶ 115 and 118 of the Answer.

13. With respect to the allegations contained in ¶ 116 Plaintiff denies the allegations as stated therein.

14. Denies, in their entirety, the allegations contained in ¶¶ 117, 119 and 120 of the Answer.

15. With respect to the allegations contained in ¶ 121 of the Answer Plaintiff responds to the allegations incorporated therein by reference as previously set forth herein with respect to the individual paragraphs.

16. Denies, in their entirety, the allegations contained in ¶¶ 122, 123, 124, 125 and 126 of the Answer.

17. Denies, in their entirety, any allegations of the Answer to which specific reference by number herein may have been inadvertently omitted.

18. In the event that any of Defendants' Affirmative Defenses are deemed to be counterclaims, the allegations of such counterclaims are hereby denied.

Affirmative Defenses

First Affirmative Defense

The Counterclaims fail to state a claim upon which relief may be granted.

Second Affirmative Defense

Defendants have failed to plead the fraud claims with the requisite degree of specificity.

Third Affirmative Defense

Defendants' claims are barred by the doctrine of laches.

Fourth Affirmative Defense

Defendants' claims are barred by the doctrine of waiver.

Fifth Affirmative Defense

Defendants' claims are barred by the doctrine of estoppel.

Sixth Affirmative Defense

Defendants' claims are barred by Defendants' fraudulent conduct.

Seventh Affirmative Defense

Defendants' claims are barred by the Statute of Limitations.

Eighth Affirmative Defense

Plaintiff reserves the right to assert that Defendants have failed to join a party and/or parties under Rule 19.

Wherefore, Plaintiff, L & L Wings, Inc., prays that the Court issue an order as follows:

- A. Dismissing Defendants' Counterclaims in their entirety; and
- B. Awarding to Plaintiff, L & L Wings, Inc., the costs of defending the Counterclaims, including reasonable attorneys' fees; and

C. Awarding to Plaintiff the relief prayed for in the Complaint together with such other and further relief as may seem just and proper under the circumstances.

Dated: New York, New York.
February __, 2008

BINGHAM McCUTCHEN LLP

By: _____

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